

Department of Justice

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(1) Within an official training (or -fitness) program of his public agency; and

(2) Mandatory, rated (i.e., officially tested, -graded, -judged, -timed, etc.), or directly supervised, -proctored, or -monitored.

Public safety agency, -organization, or -unit means a department or agency (or component thereof)—

(1) In which a public safety officer serves in an official capacity, with or without compensation, as such an officer (of any kind but disaster relief worker); or

(2) Of which a public safety officer is an employee, performing official duties as described in the Act, at 42 U.S.C. 3796b(9)(B) or (C), as a disaster relief worker.

Risky behavior means—

(1) Failure (without reasonable justification or excuse) to undertake treatment—

(i) Of any commonly-accepted cardiovascular-disease risk factor associated with clinical values, where such risk factor is—

(A) Known (or should be known) to be present; and

(B) Present to a degree that substantially exceeds the minimum value commonly accepted as indicating high risk;

(ii) Of any disease or condition commonly accepted to be associated with substantially increased risk of cardiovascular disease, where such associated disease or condition is known (or should be known) to be present; or

(iii) Where a biological parent, -sibling, or -first-generation offspring, is known to have (or have a history of) cardiovascular disease;

(2) Smoking an average of more than one-half of a pack of cigarettes (or its equivalent) per day;

(3) Excessive consumption of alcohol;

(4) Consumption of controlled substances included on Schedule I of the drug control and enforcement laws (see 21 U.S.C. 812(a)), where such consumption is commonly accepted to be associated with increased risk of cardiovascular disease;

(5) Abuse of controlled substances included on Schedule II, III, IV, or V of the drug control and enforcement laws (see 21 U.S.C. 812(a)), where such abuse is commonly accepted to be associated

with increased risk of cardiovascular disease; or

(6) Any activity or action, specified in the Act, at 42 U.S.C. 3796a(1), (2), or (3), that is commonly accepted to be associated with substantially increased risk of cardiovascular disease.

Routine—Neither of the following shall be dispositive in determining whether an activity or action shall be understood to have been performed as a matter of routine:

(1) Being generally described by the public agency as routine or ordinary; or

(2) The frequency with which it may be performed.

Step-parent of a public safety officer means a current or former spouse of the legally-adoptive or biological parent (living or deceased) of a public safety officer conceived (or legally adopted) by that parent before the marriage of the spouse and the parent, which spouse (not being a legally-adoptive parent of the officer), as of the injury date,

(1) Received over half of his support from the officer;

(2) Had as his principal place of abode the home of the officer and was a member of the officer's household; or

(3) Was in a child-parent relationship with the officer.

Undertaking of treatment—An individual undertakes treatment, when he consults with a physician licensed to practice medicine in any jurisdiction described in the Act, at 42 U.S.C. 3796b(8), and complies substantially with his recommendations.

[61 FR 50213, Sept. 24, 1996, as amended at 73 FR 76832, Dec. 17, 2008]

§ 32.14 PSOB Office determination.

(a) Upon its approving or denying a claim, the PSOB Office shall serve notice of the same upon the claimant (and upon any other claimant who may have filed a claim with respect to the same public safety officer). In the event of a denial, such notice shall—

(1) Specify the factual findings and legal conclusions that support it; and

(2) Provide information as to requesting a Hearing Officer determination.

(b) Upon a claimant's failure (without reasonable justification or excuse)

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to pursue in timely fashion the determination, by the PSOB Office, of his filed claim, the Director may, at his discretion, deem the same to be abandoned. Not less than thirty-three days prior thereto, the PSOB Office shall serve the claimant with notice of the Director's intention to exercise such discretion.

(c) In connection with its determination (pursuant to a filed claim) of the existence of competent medical evidence to the contrary, the PSOB Office shall serve the claimant with notice (indicating that he may file such documentary, electronic, video, or other non-physical evidence (such as medical-history records, as appropriate) and legal arguments in support of his claim as he may wish to provide), where there is evidence before it that affirmatively suggests that—

(1) The public safety officer actually knew or should have known that he had cardio-vascular disease risk factors and appears to have worsened or aggravated the same through his own intentional and risky behavior (as opposed to where the evidence affirmatively suggests merely that cardio-vascular disease risk factors were present); or

(2) It is more likely than not that a public safety officer's heart attack or stroke was imminent.

[73 FR 76534, Dec. 17, 2008]

§ 32.15 Prerequisite certification.

(a) Except as provided in the Act, at 42 U.S.C. 3796c–1 or Public Law 107–37, and unless, for good cause shown, the Director grants a waiver, no claim shall be approved unless the following (which shall be necessary, but not sufficient, for such approval) are filed with the PSOB Office:

(1) Subject to paragraphs (b) and (d) of this section, a certification from the public agency in which the public safety officer served (as of the injury date) that he died as a direct and proximate result of a line of duty injury, and either—

(i) That his survivors (listed by name, address, relationship to him, and amount received) have received (or legally are entitled to receive) the maximum death benefits legally payable by the agency with respect to deaths of

public safety officers of his kind, rank, and tenure; or

(ii) Subject to paragraph (c) of this section, that the agency is not legally authorized to pay—

(A) Any benefits described in paragraph (a)(1)(i) of this section, to any person; or

(B) Any benefits described in paragraph (a)(1)(i) of this section, to public safety officers of the kind, rank, and tenure described in such paragraph;

(2) A copy of any findings or rulings made by any public agency that relate to the officer's death; and

(3) A certification from the claimant listing every individual known to him who is or might be the officer's child, spouse, or parent.

(b) The provisions of paragraphs (a)(1) and (d) of this section shall also apply with respect to every public agency that legally is authorized to pay death benefits with respect to the agency described in that paragraph.

(c) No certification described in paragraph (a)(1)(ii) of this section shall be deemed complete for purposes of this section unless it—

(1) Lists every public agency (other than BJA) that legally is authorized to pay death benefits with respect to the certifying agency; or

(2) States that no public agency (other than BJA) legally is authorized to pay death benefits with respect to the certifying agency.

(d) Subject to paragraphs (b) and (c) of this section, if the Director finds that the conditions specified in the Act, at 42 U.S.C. 3796(k), are satisfied with respect to a particular public safety officer's death, and that no circumstance specified in the Act, at 42 U.S.C. 3796a(1), (2), or (3), applies with respect thereto—

(1) The certification as to death, described in paragraph (a)(1) of this section, shall not be required; and

(2) The certification as to benefits, described in paragraph (a)(1)(ii) of this section, shall be deemed complete for purposes of this section if it—

(i) Describes the public agency's understanding of the circumstances (including such causes of which it may be aware) of the officer's death; and